

IN THE COURT OF ADDL. CIVIL JUDGE & J.M.F.C, AT HONAVAR

Dated on this the 19th day of August, 2020

F.D.P No.6/2018

PRESENT: SMT. SANMATHI S.R.

BA.L.,LL.B.,LLM.,

Addl. Civil Judge & J.M.F.C, Honnavar.

Plaintiff: U.F.M.Sri.Manjunath S/o Ganapati @ Timmayya Naik

(By Sri.M.L.N., Advocate)

//Vs.//

Defendants: 2.Sri.Uday S/o Ramchandra Naik and others

(D-1 deceased)

(D-2 by Sri.H.U.N Advocate)

(D-3 & 4 exparte)

IA.NO.I

Applicant: UFM Sri.Manjunath S/o Ganapati @ Timmayya Naik,

Age 55 years,

R/o. Gullapur, Ramanagar,Tq: Yellapur.

//Vs.//

Respondents: {1.Smt.Seete Kom Ramchandra Naik,

Age 85 years,

R/o. Gundibail, Tq: Honnavar.}

(Since deceased by his L.Rs.

By respondent No.2 and 3).

2. Sri.Uday S/o Ramachandra Naik,

Age 51 years.

R/o. Gundibail, Tq: Honnavar.

3. Smt.Savita Kom Rajesh Naik,

Age 58 years,

R/o. Rayalkeri,Tq: Honnavar.

4. UFM Sri.Jaiprakash S/o Mableshtar Naik

Age 58 years, Occ: Advocate,

R/o. Near Padmashree Takies, Sirsi,

Tq: Sirsi.

ORDER ON IA NO.I

The applicant has filed this application Under Order 39 Rule 1 and 2 R/W sec.151 of CPC seeking temporary injunction against Respondent No.1 and 2 to prevent them from constructing any structure in the petition schedule property till disposal of this petition.

2. In the affidavit filed along with application it is stated that he has filed this petition to get final decree on the judgment and decree passed in O.S No.34/2014. As per the preliminary decree he has got 1/3rd share in the petition schedule properties. When the things are like this respondent No.1 and 2 have started construction work in the petition schedule property. They have no right to construct any structure in the petition schedule property unless and until the properties are divided by meets and bounds. It is further stated that the respondent No.1 and 2 have collected building material like stone, jelly,sand and steel to construct house. Hence filed this application seeking temporary injunction against respondent No.1 and 2 to prevent them from constructing any building in the petition schedule property.

3. On the other hand respondent No.2 has filed objection to this application and stated that he had 1/3rd share in the suit schedule properties. This respondent and respondent No. 4 are residing in the village since 50 years. He is in possession of the 1/3rd share in the petition schedule property. He denied that he is constructing new building in the petition schedule property. Whereas, stated that there was a old house belonged to his father in the

petition schedule property in which he was in possession. The same was old and it was not possible for them to stay in that old house during rainy season. Hence, he has constructed house in the portion in which he is in possession. It is further stated that he had not constructed house in the portion of land belonged to petitioner and 4th respondent. Hence contended that no injustice will be caused to the petitioner or 4th respondent. Therefore, prays to reject the application.

4. Heard arguments on both side.

5. The points that arise for my consideration is as follows:-

1. Whether the petitioner has made out prima-facie case in his favour to grant ad-interim injunction as sought for ?
2. In whose favour balance of convenience lies?
3. To whom the greater hardship will be caused in the event if the injunction is granted or refused?
4. What order?

6. My answer to the above points is as follows.

Point No. 1: In the affirmative

Point No. 2: Balance of convenience lies in favour of petitioner

Point No.3: petitioner will suffer more hardship if TI is refused.

Point No. 4: As per final order for the following :-

REASONS

7. Point No.1 to 3:- These points are interlinked with one another. Hence, to avoid repetition of facts these points are taken together for common discussion.

8. petitioner has filed this petition seeking final decree on the preliminary decree passed in O.S No.34/2014. According to petitioner he had got 1/3rd share in the petition schedule properties. I have perused the certified copy of the decree passed in O.S No. 34/2014. It is certain that petitioner's branch got 1/3rd share, Respondent No.1 to 3's branch got 1/3rd share and 4th respondent branch had got 1/3rd share in the petition schedule properties. At present the properties are not finally divided among him and respondents. It is the allegation of the petitioner that the respondent 2 have collected building materials and are about to construct house in the petition schedule property for which they are having no right.

9. On the other hand Respondent No.2 stated that he had not constructed new house but constructed house in the place where his father's old house was situated. Respondent No.2 in his objection clearly stated about construction of building in the petition schedule property. This itself is sufficient to believe about the apprehension of the petitioner. It is already decided that this petitioner is having 1/3rd share in the petition schedule property. As such, the objection filed by the respondent No.2 made me to hold about existence of prima facie case in favour of plaintiff. Respondent No.2 though stated that he had completed construction work, there is no documents on record to believe the same. Respondent No.2 did not produced any document to show that he has completed construction work. In the absence of material on record, it is not possible to hold that the respondent had completed construction work, hence he will be put to irreparable loss if TI is given in favour of petitioner. Apart from his pleading in the objection nothing is on record to show that he had completed construction work. But his objection shows about his interference to believe the apprehension of the petitioner. Further it is true that there is no final division of petition schedule

properties among petitioner and respondents. This being the case respondents have no right to construct house in the petition schedule properties until and unless there is division of petition schedule properties by meets and bounds.

10. On careful perusal of entire materials on record, petitioner at this stage of the proceeding had made out prima facie existence of materials to believe his apprehension. Therefore, I am of the clear opinion that the petitioner will be put to more hardship compared to respondents if TI is not granted. Moreover balance of convenience lies in favour of petitioner. Because if at this stage if the respondent No.2 is not prevented by way of Temporary injunction he might construct house in the petition schedule property which might be more valuable place than the other properties. In such case it may not be possible to the petitioner to protect his right with respect to his 1/3rd share in the petition schedule properties. Hence I am of the clear opinion that the petitioner is entitle for TI against respondent No.2. Therefore, point No.1 to 3 answered in the affirmative in favour of petitioner.

11. Point No.4: In view of my answer to point No.1 to 3 as stated above, I proceed to pass following:-

ORDER

IA No.I filed by the petitioner U/o.39 Rule 1
and 2 R/W sec.151 of CPC is hereby allowed.

Respondent No.2 is hereby restrained from
constructing any structure in the petition schedule
property till disposal of this petition.

(Dictated to the Stenographer directly on the computer, computerized by her, corrected and then pronounced by me in the open court on 19th day of August 2020.)

Sd/-

**(Smt.Sanmathi S.R.),
Addl.Civil Judge & JMFC., Honnavar.**